

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-1227-MSW-E TCEQ ID: RN105584809 CASE NO.: 36273**  
**RESPONDENT NAME: EGGEMEYER LAND CLEARING, LLC**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Pue Road and West US Highway 90, San Antonio, Bexar County</p> <p><b>TYPE OF OPERATION:</b> Mulching facility</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired August 24, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>     <b>TCEQ Attorney:</b> Mr. Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016                             Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019     <b>TCEQ Enforcement Coordinator:</b> Mr. John Shelton, Waste Enforcement Section, MC 128, (512) 239-2563     <b>TCEQ Regional Contact:</b> Mr. Joel Anderson, San Antonio Regional Office, MC R-13, (210) 403-4010     <b>Respondent:</b> Mr. Steven W. Eggemeyer, Manager, Eggemeyer Land Clearing, LLC, P.O. Box 741, Yoakum, Texas, 77995     <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint</p> <p><input checked="" type="checkbox"/> Routine</p> <p><input type="checkbox"/> Enforcement Follow-up</p> <p><input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> July 18, 2008</p> <p><b>Date of NOE Relating to this Case:</b> July 29, 2008</p> <p><b>Background Facts:</b> The EDRP was filed on February 5, 2009. The Agreed Order was signed June 29, 2009.</p> <p><b>Current Compliance Status:</b> Not yet in compliance.</p> <p><b>MSW:</b></p> <ol style="list-style-type: none"> <li>Failed to notify the TCEQ prior to commencement of new operations [30 TEX. ADMIN. CODE § 328.5(b)].</li> <li>Failed to submit a written closure cost estimate to the TCEQ and to obtain and maintain financial assurance for the closure of a recycling facility that stores combustible materials outdoors [30 TEX. ADMIN. CODE §§ 37.921 and 328.5(c) and (d)].</li> <li>Failed to have a fire prevention and suppression plan [30 TEX. ADMIN. CODE § 328.5(h)].</li> </ol>	<p><b>Total Assessed:</b> \$3,921</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order</p> <p><input type="checkbox"/> Financial Inability to Pay</p> <p><input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b> \$195/\$3,726</p> <p>The Respondent paid \$195 of the administrative penalty. The remaining amount of \$3,726 shall be payable in 23 monthly payments of \$162 each.</p> <p><b>Site Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provision(s):</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Immediately cease accepting and processing any municipal solid waste at the Facility until properly authorized.</li> <li>Within 15 days: <ol style="list-style-type: none"> <li>Submit a NOI to operate a recycling facility;</li> <li>Submit and get approval for a closure cost estimate; and</li> <li>Develop and submit a fire prevention plan to local fire officials.</li> </ol> </li> <li>Within 30 days, submit documentation that demonstrates acceptable financial assurance for the closure of the Facility.</li> <li>In lieu of Ordering Provisions 1 through 3 above, within 30 days, cease accepting waste and recyclable materials and remove all accumulated materials and dispose at an authorized facility.</li> <li>Within 45 days, submit written certification to demonstrate compliance with Ordering Provisions above.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	28-Jul-2008	Screening	28-Jul-2008	EPA Due	
	PCW	6-Mar-2009				

## RESPONDENT/FACILITY INFORMATION

Respondent	Eggemeyer Land Clearing, LLC		
Reg. Ent. Ref. No.	RN105584809		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

## CASE INFORMATION

Enf./Case ID No.	36273	No. of Violations	3
Docket No.	2008-1227-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	John Shelton
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 **\$3,000**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 0.0% Enhancement Subtotals 2, 3, & 7 **\$0**

Notes The Respondent has no previous history of NOV's or Orders at this site within the last five years.

Culpability No 0.0% Enhancement Subtotal 4 **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 **\$0**

Economic Benefit 0.0% Enhancement\* Subtotal 6 **\$0**

Total EB Amounts \$936  
Approx. Cost of Compliance \$1,290  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal **\$3,000**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 30.7% Adjustment **\$921**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended adjustment to capture the avoided cost associated with the violation.

Final Penalty Amount **\$3,921**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty **\$3,921**

**DEFERRAL** 0.0% Reduction Adjustment **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral not offered for non-expedited settlement.

**PAYABLE PENALTY** **\$3,921**

Screening Date 28-Jul-2008

Docket No. 2008-1227-MSW-E

PCW

Respondent Eggemeyer Land Clearing, LLC

Policy Revision 2 (September 2002)

Case ID No. 36273

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN105584809

Media [Statute] Municipal Solid Waste

Enf. Coordinator John Shelton

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

The Respondent has no previous history of NOVs or Orders at this site within the last five years.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

<b>Screening Date</b> 28-Jul-2008		<b>Docket No.</b> 2008-1227-MSW-E		<b>PCW</b>	
<b>Respondent</b> Eggemeyer Land Clearing, LLC		<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 36273		<i>PCW Revision June 12, 2008</i>			
<b>Reg. Ent. Reference No.</b> RN105584809					
<b>Media [Statute]</b> Municipal Solid Waste					
<b>Enf. Coordinator</b> John Shelton					
<b>Violation Number</b>	<input type="text" value="1"/>				
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 328.5(b)"/>				
<b>Violation Description</b>	<input type="text" value="Failed to notify the agency prior to the commencement of new operations, as documented during an investigation conducted on July 18, 2008. Specifically, the respondent began mulching and recycling operations without submitting a Notice of Intent (NOI)."/>				
<b>Base Penalty</b>					<input type="text" value="\$10,000"/>

  

**>> Environmental, Property and Human Health Matrix**

	<b>Harm</b>					
	Major	Moderate	Minor			
<b>Release</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>			
<b>Actual</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>			
<b>Potential</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>			
				<b>Percent</b>	<input type="text" value="0%"/>	

  

**>> Programmatic Matrix**

	<b>Falsification</b>					
	Major	Moderate	Minor			
<b>Actual</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>			
<b>Potential</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>			
				<b>Percent</b>	<input type="text" value="10%"/>	

**Matrix Notes**

**Adjustment**

  

**Violation Events**

<b>Number of Violation Events</b>	<input type="text" value="1"/>	<b>Number of violation days</b>	<input type="text" value="10"/>
<i>mark only one with an x</i>	<input type="text" value="daily"/> <input type="text" value="monthly"/> <input type="text" value="quarterly"/> <input type="text" value="semiannual"/> <input type="text" value="annual"/> <input type="text" value="single event"/>		
<b>Violation Base Penalty</b>			
<input type="text" value="\$1,000"/>			

One single event is recommended.

  

**Good Faith Efforts to Comply**

	<b>0.0% Reduction</b>				
	Before NOV	NOV to EDPRP/Settlement Offer			
<b>Extraordinary</b>	<input type="text"/>	<input type="text"/>			
<b>Ordinary</b>	<input type="text"/>	<input type="text"/>			
<b>N/A</b>	<input type="text" value="X"/>	<input type="text" value="(mark with x)"/>			
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>				
<b>Violation Subtotal</b>					<input type="text" value="\$1,000"/>

  

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$3"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$1,307"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,307"/>	

**Economic Benefit Worksheet**

Respondent Eggemeyer Land Clearing, LLC

Case ID No. 36273

Reg. Ent. Reference No. RN105584809

Media Municipal Solid Waste

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	18-Jul-2008	23-Mar-2009	0.68	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to submit a NOI prior to commencing recycling activities. The Date Required is the investigation date and the Final Date is the estimated date of compliance

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$3

<b>Screening Date</b> 28-Jul-2008		<b>Docket No.</b> 2008-1227-MSW-E		<b>PCW</b>	
<b>Respondent</b> Eggemeyer Land Clearing, LLC		<small>Policy Revision 2 (September 2002)</small>			
<b>Case ID No.</b> 36273		<small>PCW Revision June 12, 2008</small>			
<b>Reg. Ent. Reference No.</b> RN105584809					
<b>Media [Statute]</b> Municipal Solid Waste					
<b>Enf. Coordinator</b> John Shelton					
<b>Violation Number</b>	<div style="border: 1px solid black; padding: 2px;">2</div>				
<b>Rule Cite(s)</b>	<div style="border: 1px solid black; padding: 2px;">30 Tex. Admin. Code §§ 37.921, 328.5(c) and (d)</div>				
<b>Violation Description</b>	<div style="border: 1px solid black; padding: 5px;">Failed to to submit a written closure cost estimate to the TCEQ and to obtain and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors, as documented during an investigation conducted on July 18, 2008. Specifically, the Respondent operates a recycling facility that stores combustible materials (i.e., brush, mulch) outdoors, without the required closure cost estimate and financial assurance.</div>				
				<b>Base Penalty</b>	<div style="border: 1px solid black; padding: 2px;">\$10,000</div>
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
<b>OR</b>	<b>Harm</b>				
	Release	Major	Moderate	Minor	
	Actual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<b>Percent</b> <div style="border: 1px solid black; padding: 2px;">0%</div>
	Potential	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
<b>&gt;&gt; Programmatic Matrix</b>					
	Falsification	Major	Moderate	Minor	
	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	X	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<b>Percent</b> <div style="border: 1px solid black; padding: 2px;">10%</div>
<b>Matrix Notes</b>	<div style="border: 1px solid black; padding: 5px;">100% of the rule requirement was not met.</div>				
				<b>Adjustment</b>	<div style="border: 1px solid black; padding: 2px;">\$9,000</div>
					<div style="border: 1px solid black; padding: 2px;">\$1,000</div>
<b>Violation Events</b>					
<b>Number of Violation Events</b>		<div style="border: 1px solid black; padding: 2px;">1</div>	<b>Number of violation days</b>		<div style="border: 1px solid black; padding: 2px;">10</div>
<small>mark only one with an x</small>	daily	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<b>Violation Base Penalty</b> <div style="border: 1px solid black; padding: 2px;">\$1,000</div>		
	monthly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>			
	quarterly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>			
	semiannual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>			
	annual	X			
	single event	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>			
<div style="border: 1px solid black; padding: 5px; text-align: center;">One annual event is recommended.</div>					
<b>Good Faith Efforts to Comply</b>		<b>0.0% Reduction</b>		<div style="border: 1px solid black; padding: 2px;">\$0</div>	
	Before NOV	NOV to EDPRP/Settlement Offer			
Extraordinary	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>			
Ordinary	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>			
N/A	X	(mark with x)			
<b>Notes</b>	<div style="border: 1px solid black; padding: 5px;">The Respondent does not meet the good faith criteria for this violation.</div>				
				<b>Violation Subtotal</b>	<div style="border: 1px solid black; padding: 2px;">\$1,000</div>
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>			
<b>Estimated EB Amount</b>		<div style="border: 1px solid black; padding: 2px;">\$929</div>	<b>Violation Final Penalty Total</b>		<div style="border: 1px solid black; padding: 2px;">\$1,307</div>
<b>This violation Final Assessed Penalty (adjusted for limits)</b>					<div style="border: 1px solid black; padding: 2px;">\$1,307</div>

**Economic Benefit Worksheet****Respondent** Eggemeyer Land Clearing, LLC**Case ID No.** 36273**Reg. Ent. Reference No.** RN105584809**Media** Municipal Solid Waste**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$250	18-Jul-2008	23-Mar-2009	0.68	\$8	n/a	\$8

**Notes for DELAYED costs**

Estimated cost to obtain a closure cost estimate. The Date Required is the investigation date and the Final Date is the estimated date if compliance.

<b>Avoided Costs</b>							
<b>ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)</b>							
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)	\$840	18-Jul-2007	18-Jul-2008	1.92	\$81	\$840	\$921

**Notes for AVOIDED costs**

Estimated cost of obtaining financial assurance for the facility. The Date Required is the beginning date of the violation and the Final Date is the investigation date.

**Approx. Cost of Compliance**

\$1,090

**TOTAL**

\$929

<b>Screening Date</b> 28-Jul-2008		<b>Docket No.</b> 2008-1227-MSW-E		<b>PCW</b>	
<b>Respondent</b> Eggemeyer Land Clearing, LLC		<small>Policy Revision 2 (September 2002)</small>			
<b>Case ID No.</b> 36273		<small>PCW Revision June 12, 2008</small>			
<b>Reg. Ent. Reference No.</b> RN105584809					
<b>Media [Statute]</b> Municipal Solid Waste					
<b>Enf. Coordinator</b> John Shelton					
<b>Violation Number</b>		<input type="text" value="3"/>			
<b>Rule Cite(s)</b>		<input type="text" value="30 Tex. Admin. Code § 328.5(h)"/>			
<b>Violation Description</b>		<input type="text" value="Failed to have a fire prevention and suppression plan, as documented during an investigation conducted on July 18, 2008."/>			
<b>Base Penalty</b>					<input type="text" value="\$10,000"/>

  

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>	<b>Harm</b>				
		<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
	<b>Release</b>				
	<b>Actual</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>
	<b>Potential</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

  

**>> Programmatic Matrix**

<b>Falsification</b>				
	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	
				<b>Percent</b> <input type="text" value="10%"/>

**Matrix Notes**

**Adjustment**

  
  

**Violation Events**

<b>Number of Violation Events</b> <input type="text" value="1"/>	<input type="text" value="10"/>	<b>Number of violation days</b>
--	---------------------------------	---------------------------------

<small>mark only one with an x</small>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

**Violation Base Penalty**

One single event is recommended.

  

<b>Good Faith Efforts to Comply</b>	<b>0.0%</b> Reduction	<input type="text" value="\$0"/>
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	<small>Before NOV</small>	<small>NOV to EDP RP/Settlement Offer</small>
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	<small>(mark with x)</small>

**Notes**

**Violation Subtotal**

  

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
---	-----------------------------

<b>Estimated EB Amount</b> <input type="text" value="\$3"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$1,307"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,307"/>	

**Economic Benefit Worksheet****Respondent** Eggemeyer Land Clearing, LLC**Case ID No.** 36273**Reg. Ent. Reference No.** RN105584809**Media** Municipal Solid Waste**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	18-Jul-2008	23-Mar-2009	0.68	\$3	n/a	\$3

**Notes for DELAYED costs**

Estimated cost to draft a site specific fire prevention and suppression plan and make available to local fire prevention authorities. Date Required is the investigation date and Final Date is the estimated date of compliance.

<b>Avoided Costs</b>							
<b>ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)</b>							
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs****Approx. Cost of Compliance**

\$100

**TOTAL**

\$3

## Compliance History

Customer/Respondent/Owner-Operator:	CN603114612	Eggemeyer Land Clearing, LLC	Classification: AVERAGE	Rating: 2.00
Regulated Entity:	RN105584809	EGGEMEYER LAND CLEARING LLC - HWY 90 AND PUE RD	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):				
Location:	PUE RD AND W US HWY 90 - BETWEEN PUE RD AND LAFB - LAFB AND SAN ANTONIO - BEXAR COUNTY		Rating Date: September 01 07 Repeat Violator: NO	
TCEQ Region:	REGION 13 - SAN ANTONIO			
Date Compliance History Prepared:	July 28, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 28, 2003 to July 28, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Colin Barth	Phone:	(512) 239-0086	

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

### Components (Multimedia) for the Site :

- |                        |   |  |
|------------------------|---|--|
| A.                     | Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. |  |
|                        | N/A   |  |
| B.                     | Any criminal convictions of the state of Texas and the federal government.  |  |
|                        | N/A   |  |
| C.                     | Chronic excessive emissions events.   |  |
|                        | N/A   |  |
| D.                     | The approval dates of investigations. (CCEDS Inv. Track. No.)   |  |
|                        | N/A   |  |
| E.                     | Written notices of violations (NOV). (CCEDS Inv. Track. No.)  |  |
| F.                     | Environmental audits.   |  |
|                        | N/A   |  |
| G.                     | Type of environmental management systems (EMSs).  |  |
|                        | N/A   |  |
| H.                     | Voluntary on-site compliance assessment dates.  |  |
|                        | N/A   |  |
| I.                     | Participation in a voluntary pollution reduction program.   |  |
|                        | N/A   |  |
| J.                     | Early compliance.   |  |
|                        | N/A   |  |
| Sites Outside of Texas |   |  |
|                        | N/A   |  |

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
EGGEMEYER LAND CLEARING,  
LLC; RN105584809

§  
§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2008-1227-MSW-E

### I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Eggemeyer Land Clearing, LLC ("Eggemeyer") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Eggemeyer, appear before the Commission and together stipulate that:

1. Eggemeyer owns and operates a mulching facility located at Pue Road and West US Highway 90, San Antonio, Bexar County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and TCEQ rules.
3. The Commission and Eggemeyer agree that the Commission has jurisdiction to enter this Agreed Order, and that Eggemeyer is subject to the Commission's jurisdiction.
4. Eggemeyer received notice of the violations alleged in Section II ("Allegations") on or about August 2, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Eggemeyer of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of three thousand nine hundred twenty-one dollars (\$3,921.00) is assessed by the Commission in settlement of the violations alleged in Section

- II ("Allegations"). Eggemeyer paid one hundred ninety-five dollars (\$195.00) of the administrative penalty. The remaining amount of three thousand seven hundred twenty-six dollars (\$3,726.00) of the administrative penalty shall be payable in 23 monthly payments of one hundred sixty-two dollars (\$162.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Eggemeyer fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Eggemeyer's failure to meet the payment schedule of this Agreed Order constitutes the failure by Eggemeyer to timely and satisfactorily comply with all of the terms of this Agreed Order
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
  8. The Executive Director of the TCEQ and Eggemeyer agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
  9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Eggemeyer has not complied with one or more of the terms or conditions in this Agreed Order.
  10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
  11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

1. During an investigation conducted on July 18, 2008, a TCEQ San Antonio Regional Office investigator documented that Eggemeyer violated:
  - a. 30 TEX. ADMIN. CODE § 328.5(b) by failing to notify the TCEQ prior to commencement of new operations. Specifically, Eggemeyer began mulching and recycling operations without submitting a Notice of Intent ("NOI");

- b. 30 TEX. ADMIN. CODE §§ 37.921, and 328.5(c) and (d) by failing submit a written closure cost estimate to the TCEQ and to obtain and maintain financial assurance for the closure of a recycling facility that stores combustible materials outdoors. Specifically, Eggemeyer operates a recycling facility that stores combustible materials (i.e., brush and mulch) outdoors without the required closure cost estimate and financial assurance; and
- c. 30 TEX. ADMIN. CODE § 328.5(h) by failing to have a fire prevention and suppression plan.

### III. DENIALS

Eggemeyer generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

- 1. It is, therefore, ordered by the TCEQ that Eggemeyer pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Eggemeyer's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Eggemeyer Land Clearing, LLC, Docket No. 2008-1227-MSW-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

- 2. Eggemeyer shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, Eggemeyer shall cease accepting and processing any municipal solid waste at the Facility until properly authorized;
  - b. Within 15 days after the effective date of this Agreed Order, Eggemeyer shall:

- i. Submit a NOI to operate a recycling facility, in accordance with 30 TEX. ADMIN. CODE § 328.5(b);
  - ii. Submit and get approval for a closure cost estimate, in accordance with 30 TEX. ADMIN. CODE § 328.5(c); and
  - iii. Develop and submit a fire prevention plan to local fire officials, in accordance with 30 TEX. ADMIN. CODE § 328.5(h);
- c. Within 30 days after the effective date of this Order, Eggemeyer shall submit documentation that demonstrates acceptable financial assurance for the closure of the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d) to:

Financial Assurance Team, MC 184  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087

- d. In lieu of 2.a. through 2.c., within 30 days after the effective date of this Order, Eggemeyer shall cease accepting waste and recyclable materials and remove all accumulated materials and dispose at an authorized facility.

Submit documentation, including Docket Number, for 2.b. through 2.d. to:

Municipal Solid Waste Permits Section, MC 124  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087

With a copy to:

San Antonio Regional Office  
Texas Commission on Environmental Quality  
14250 Judson Road  
San Antonio, Texas 78233-4480

- e. Within 45 days after the effective date of this Order, Eggemeyer shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.d. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Eggemeyer shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.d. to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

Mr. Joel Anderson, Waste Section Manager  
Texas Commission on Environmental Quality  
San Antonio Regional Office  
14250 Judson Road  
San Antonio, Texas 78233-4480

3. The provisions of this Agreed Order shall apply to and be binding upon Eggemeyer. Eggemeyer is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Eggemeyer fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Eggemeyer's failure to comply is not a violation of this Agreed Order. Eggemeyer shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Eggemeyer shall notify the Executive Director within seven days after Eggemeyer becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Eggemeyer shall be

made in writing to the Executive Director. Extensions are not effective until Eggemeyer receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Eggemeyer in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Eggemeyer, or three days after the date on which the Commission mails notice of the Order to Eggemeyer, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Eggemeyer Land Clearing, LLC  
Docket No. 2008-1227-MSW-E  
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## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

*Robert J. Perdue*

8/17/09

For the Executive Director

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on Eggemeyer's compliance history;
- Greater scrutiny of any permit applications submitted by Eggemeyer;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against Eggemeyer;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Eggemeyer; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

*Steven Eggemeyer*  
Signature

8/29/09  
Date

Steven Eggemeyer  
Name (Printed or typed)  
Authorized representative of  
Eggemeyer Land Clearing, LLC

Owner  
Title